IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SHERI R. ADAMS,	:	
Plaintiff	:	
	:	
v.	:	Civil Action No. AMD 08-346
	:	
UPPER CHESAPEAKE MEDICAL	:	
CENTER, INC., et al.,	:	
Defendants	:	
	:	

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MEMORANDUM OPINION

Plaintiff Sheri R. Adams filed this employment discrimination action alleging that her former employer, Upper Chesapeake Medical Center, Inc., ("UCMC"), violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 et seq., by retaliating against her for a single complaint of on-the-job harassment. Discovery is complete and defendant has moved for summary judgment. Oral argument is not necessary. For the reasons recited herein, defendant's motion shall be granted.

I.

As the non-movant, Adams is entitled to have the court view the facts most favorably to her claims. In November 2005, Adams began working at UCMC as a part-time Cytotechnologist in the Laboratory Services Department. She directly reported to Karen Hopkins ("Hopkins"), the supervisor of the Histology and Cytology Department at UCMC.[1] Adams worked for UCMC on an as-needed basis, but she was guaranteed a

[1] A cytotechnologist is responsible for screening and preliminarily diagnosing gynecologic and non-gynecologic specimens for evidence of disease and malignancy. This is a time-sensitive job, because hospitals are required to screen and diagnosis 90% of all non-

minimum of 16 hours during every two-week pay period.

On December 21, 2005, Dr. Alberto Seiguer ("Seiguer"), the Medical Director of the Laboratory Services and Chairman of the Department of Pathology for both UCMC and Harford Memorial, subjected Adams to unwelcome conduct of a sexual nature while under the influence of alcohol. He complimented Adams on her physical appearance, suggested that they celebrate the winter solstice with an orgy, grabbed and hugged her tightly, and attempted to kiss her on the mouth.

Adams reported the inappropriate sexual behavior to Lynne French ("French"), then the Director of the Lab Department. French reviewed UCMC's sexual harassment policy with Adams in her office. French suggested that Adams go to Human Resources, but Adams declined because she did not want to embarrass Seiguer or French.[2] (Pl.'s dep. at 202.) Adams ultimately decided to confront Seiguer and tell him that she did not appreciate his behavior. French offered to support Adams and accompany her during this confrontation, but Adams decided to speak alone to prevent embarrassing Seiguer in front

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gynecologic specimens within two working days of the Lab Department's receipt of the specimen ("turn-around time").

[2] Adams's deposition is particularly compelling on this point. She stated "I felt that it would be an embarrassment for a doctor, a pathology director, to have to work with a laboratory manager, knowing that he had made a sexual advance towards me and he was under the influence of alcohol." (Pl.'s Dep. at 201.) She further testified as follows:

Q: You decided to handle it yourself, because you did not want to embarrass Dr. Seiguer or Lynne, correct?
A: Correct.
Q: And that included not contacting H.R., correct?
A: At the time, correct.

(*Id.* at 202).

of French. French asked Adams to call her after she talked to Seiguer.

On January 11, 2006, Adams confronted Seiguer and told him that his advances were unwanted and inappropriate. Seiguer did not apologize, instead saying: "I'm sorry you feel that way. I'm not sorry it happened, but I am sorry you feel that way." Adams relayed her experience to French.[3] Immediately afterwards, Adams felt as if French was avoiding, ignoring, and refusing to speak to her. (*Id.* at 290.) Adams felt frightened around Seiguer and began avoiding him. Importantly, Seiguer never initiated sexual contact with Adams again.

On February 21, 2006, Adams reported the December 2002 incident to Hopkins.[4] Hopkins believed that the issue had not been properly handled. She briefly discussed the issue with French, and then French immediately called Hopkins and Adams into her office together and proceeded to yell at Adams. She pointed her finger at Adams and yelled something like, "Well, you've done it now missy! Now we have to go to HR!" (Pl. compl. ¶15.)

French called Human Resources, and Robin Moran ("Moran"), a Team Member Relations Manager at UCMC, came to French's office. Moran took Adams's statement and reassured Adams that she would relay this incident to Dr. Peggy Vaughn ("Vaughn"),

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[3]Adams stated in her deposition that, at this point, she expected French to report the incident to Human Resources and to provide her with documentation of this incident. Adams, however, also admitted that (1) she did not ask French to report the incident to Human Resources, and (2) she did not request documentation from French. (*Id.* at 222-23.)

[4] Hopkins reports directly to French.

the Vice President of physician services and Seiguer's direct supervisor.[5] Moran's key concern was whether Seiguer would be a repeat offender and followed up with Adams to ensure that he was not. Moran ultimately determined that no further action was required since: (1) Seiguer admitted his wrongdoing; (2) Adams told him to refrain from further inappropriate conduct; and (3) Seiguer refrained from further inappropriate conduct.

On March 10, 2006, Moran set up a meeting between French and Adams to discuss how French handled the situation when Adams told Hopkins about the December 2005 incident. Adams wanted an apology for French's angry outburst. During this meeting, French apologized multiple times. (French. dep. at 53-54).

From March 2006 until January 2007, Adams did not contact Moran or anyone in Human Resources regarding the December 2005 incident or its aftermath.

In or about December 2006, Adams noticed a few things had changed at her office. First, she felt "tension" between her and persons in the Histology Department. She believed that Hopkins caused the tension by telling Histology employees that Adams believed that they were not doing their jobs. (Pl.'s dep. at 296.) Also, Adams felt wrongly blamed for a specific late rush specimen because she was never alerted as to the specimen's existence. (*Id.* at 309.) And lastly, she felt wrongly blamed for missing a turn-around time when she sent a specimen to Harford Memorial when the pathologist there had left for vacation, because nobody told her that he was on vacation. (*Id.* at 323.)

[5] Moran advised Vaughn about the incident between Adams and Seiguer. Vaughn decided not to confront Seiguer in light of the passage of over two months and in light of the fact that Seiguer had not engaged in any further inappropriate conduct in the interim.

Adams resigned from UCMC on December 30, 2006, effective January 13, 2007. Three days later, on January 2, 2007, Adams met with Seiguer, and he tried to persuade Adams to not leave the practice. (Pl. compl. ¶25.) They did not discuss the December 2005 incident in any way, but they did discuss some of Adams's interpersonal problems with French. (Pl.'s dep. at 355.) Adams promised that she would rescind her resignation if she could work out certain work-related issues with French and Hopkins.

Seiguer first learned that Adams complained about his actions from 2005 after the January 2007 meeting with Adams. He approached Moran to determine the source of the tension between Adams and French and Moran told him the back story, including the fact that Adams had reported him to Human Resources. (Pl. compl. ¶30.)

On January 3, 2007, Human Resources called Adams to set up a meeting with her, Seiguer, Hopkins, and French. The purpose was to set up the parameters for Adam's continued employment so that the hospital could be sure to meet certain internal deadlines while giving Adams a flexible schedule. Moran warned Adams not to rehash her confrontations with Seiguer or French from December 2005 during this meeting.

The meeting took place on January 4, 2007. They discussed Plaintiff's work schedule, meeting turn-around times, and how specimens should be handled, among other things. According to Adams, Seiguer's outlook and manner had changed dramatically from when she met with him on January 2, 2007. He indicated that the outlook for cytology was grim and that she would not need to increase her hours. Adams felt undecided about whether to rescind her resignation after this meeting, and Moran asked

her to contact her by the following Tuesday with a final answer.

On January 9, 2007, Adams rescinded her resignation. From January 14, 2007, to February 1, 2007, she was out of the office on approved leave. While Adams was out, UCMC considered hiring a back-up cytotechnologist. They possessed a resume on file and contacted that candidate on or about January 25, 2007.

On February 1, 2007, Adams and Hopkins met to discuss Adam's schedule. They determined that Adams would begin work on February 11, 2007. Afterwards, Adams met with Moran. She voiced her concern that although French did talk to her, she was no longer discussing personal matters and/or interesting cases with her, as she had in the past. A few days later, on February 6, 2007, Adams asked Moran for written documentation of the incidents between her and French and Seiguer before she started working. Moran consented to give her some type of documentation.

On February 11, 2007, Adams arrived at work and looked for the documentation from Moran. When she did not find it, she immediately emailed Hopkins and resigned her position because she did not receive documentation from Human Resources. (Pl.'s dep. at 337.) Approximately two weeks later, on February 26, 2007, Moran sent Adams a letter memorializing the December 2005 events.

The day that Adams resigned, she learned that a job listing was posted on the website for her position. On March 5, 2007, UCMC officially hired the candidate they had contacted on January 25, 2007 as the staff cytotechnologist.

II.

Summary judgment shall be granted where the moving party demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is "genuine" if there exists sufficient evidence such that a reasonable jury could return a verdict for the nonmoving party. *Id.* The court views the factual evidence and draws all reasonable inferences in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. v. Zenith Radio*, 475 U.S. 574 (1986).

III.

To establish a claim of retaliation, the Plaintiff must show that: (1) Plaintiff engaged in a protected activity under Title VII; (2) the employer took an adverse employment action against plaintiff, or the plaintiff was subjected to severe or pervasive retaliatory harassment; and (3) a causal connection existed between Plaintiff's protected activity and the subsequent actions taken by the employer. *Matvia v. Bald Head Island Management*, 259 F.3d 261, 271 (4th Cir. 2001). Defendant does not dispute that Plaintiff can establish that she engaged in protected activity when she brought her complaint about Seiguer's sexual advances to the attention of her supervisors and of the Human Resources Department. Accordingly, to obtain summary judgment in their favor, defendants must show that there is no genuine issue of material fact regarding the second or third elements. Defendants have succeeded.

A.

An adverse employment action is an action that might have "dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006). Adverse employment actions generally impact one's job title, salary, benefits, hours, or some other material aspect of one's employment. *See, e.g.*, *Boone v. Goldin*, 178 F.3d 253 (4th Cir. 1999) (explaining that discharge, demotion, decrease in pay or benefits, loss of job title or supervisory responsibility, or reduced opportunities for promotion are typical adverse employment actions).

Title VII is not "a general civility code for the American workplace." *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 80 (1998). The anti-retaliation provision in Title VII protects an individual "from retaliation that produces an injury or harm," but not from "petty slights or minor annoyances that often take place at work and that all employees experience." *Burlington Northern*, 548 U.S. at 67-68. For example, occasional yelling from a boss does not rise to the level of a materially adverse employment action. *Munday v. Waste Mgmt. Of N. Am.*, 126 F.3d 239, 243 (4th Cir. 1997) (holding that a truck driver failed to establish an adverse employment action when a manager yelled at her, generally refused to communicate with her, and instructed other employees to ignore and spy on her). Similarly, being ignored or avoided by other employees does not rise to the level of a materially adverse employment action. *Id.* These petty, even if hurtful, slights are a part of what all employees experience; they are neither

pleasant nor actionable.

In her various filings, Adams asserts that she suffered four specific types of retaliatory actions. Importantly, she testified that *none* of these allegedly retaliatory actions had *any* adverse impact on her job title, salary, benefit, or any other material aspect of her employment in her deposition. That concession alone makes it extremely unlikely that her allegations are actionable.

First, Adams alleges that French avoided her and refused to talk to her about personal stories and interesting cases like she had in the past. (Pl.'s dep. at 290.) Personal slights are not adverse employment actions. Further, these slights did not impact Adam's work because (1) Adams received most of her work instruction from Hopkins, not French; and (2) French continued to discuss work-related issues with Adams, avoiding only conversations about personal niceties. (*Id.* at 293-97.) Second, Adams alleges that Hopkins spread rumors to the Histology Department that caused Adams to feel unwanted "tension." (*Id.* at 296-97.) These rumors, although unpleasant, are just a part of the workplace environment that many, if not all, encounter on occasion. (*Id.* at 308-09.)

Third, Adams claims that she was unfairly blamed for missing a turn-around time in two particular instances, once on a rush specimen and then again when she sent a specimen to a hospital where the doctor had left for vacation. (*Id.* at 309, 323.) In one case, she received a phone call to remind her to not do it again, but in neither case was she reprimanded or disciplined in any way. (*Id.* at 322, 328.)

Fourth, Adams claimed that Human Resources did not provide Adams with documentation of the December 2005 incident in a timely manner. (*Id.* at 337.) Under UCMC's rules, Adams had no right to this documentation. Nevertheless, she did receive it within one month of requesting it, on February 26, 2007. This minor delay is far from actionable. Overall, it is abundantly clear none of Adam's so-called retaliatory actions rise to the level of a materially adverse employment action.

B.

Adams resigned, but nevertheless, she could survive summary judgment if there was a genuine dispute of material fact that she was constructively discharged. Such a dispute does not exist.

To establish constructive discharge, Adams must show that UCMC deliberately made her working conditions intolerable in an effort to induce her to quit. *Martin v. Cavalier Hotel Corp.*, 48 F.3d 1343, 1354 (4th Cir. 1995). Deliberately means, in this case, that UCMC must have intended to force Adams to quit. *Id.* In the Fourth Circuit, "dissatisfaction with work assignments, a feeling of being unfairly criticized, or difficult or unpleasant working conditions are not so intolerable as to compel a reasonable person to resign." *Carter v. Ball*, 33 F.3d 450, 459 (4th Cir. 1994).

As a matter of law, it is obvious that Adams cannot establish a constructive discharge claim. Here, Adams felt unfairly criticized and that her working conditions were unpleasant – exactly the factors that the Fourth Circuit articulated in *Carter* as insufficient to prove such a claim. Additionally, UCMC even tried to recruit Adams back

after she resigned the first time, suggesting that there was no deliberate effort to induce her to quit (and indeed, affirmatively undermining any such assertion).

C.

Since UCMC has demonstrated that Adams did not suffer any adverse employment actions, there is no need to analyze causation or discuss whether UCMC had a legitimate non-discriminatory explanation for its actions.

IV.

For the reasons stated above, defendants' motion for summary judgment shall be GRANTED. An Order follows.

Filed: April 14, 2009

/s/
André M. Davis
United States District Judge